

1882-063 Chancery Causes: W. W. Woodruff & Co] vs. John M. Whitehead &
Lee Co

Woodruff, Gibbens, Mullins, Clifton

CA-Deed
T-Property

-Deed

To the Hon. John A. Kelly, Judge of the Circuit Court
of Lee County:

Respectfully Complaining, sheweth unto your Honor,
your orators W. W. Woodruff and W. E. Gibbens, Merchants and
Partners doing business under the firm name and style
W. W. Woodruff & Co., that on the said day of September
1875, they obtained in the said Court against John
M. Whithead, of the said County, "a judgment for \$138.57
One hundred and thirty eight dollars and fifty nine
cents, with interest thereon at the rate of six per centum
per annum, from the 1st day of June, 1874, till
paid, and \$16.09 Sixteen dollars and nine cents
costs, and which said judgment a writ of fieri facias
was duly issued from the Clerk's Office of the said Court,
directed to the Sheriff of the said County, returnable
to November Rules, 1875, which was placed in the
hands of the said Sheriff to be executed, and was
on the return day thereof returned by the said
Sheriff with the following return endorsed thereon
to wit: "Not executed no property found."

(Signed)

T. S. Ely, S. L. C.

Your orators further state that their said judgment
was duly docketed in the judgment Lien Book of
Lee County on the 10th day of September, 1875, and
attested transcripts of which is filed with this Bill
marked "Exhibit A" and is prayed to be taken
and considered as a part thereof.
Now your orators will further state that at the

Pepp. Charge, in case you have upon examination
of my Exhibit B is of opinion, that J. M. Whitehead is not
legally married, that he is joint owner with his
wife of a certain tract of land, to the extent of \$1500.
and that J. M. Whitehead is the land named in
said Exhibit B.

date of the docketing of their said judgments
that the said John M. Whitehead was seized
and possessed in fee simple of certain lands
lying and being in the said County of Lee con-
taining 280 acres, more or less, on the
North side of Pearl Mountain, ^{S. Side} Waller Creek
and the South Side of Waller's Ridge, a
more particular description of which may
be had by reference to the deed made to
said John M. Whitehead & wife from Samuel
Sloan & wife filed here with marked
"Exhibit B." and is prayed to be considered as
a part of this Bill. //

Your orator further represents that since the docketing
of their judgments in order to create it as a lien
upon the lands of the said John M. Whitehead
in the County of Lee, that one Jeremiah Mullens
has purchased from the said John M. Whitehead
about 240 acres of the said land with
legal notice of your orator's lien thereon;
and that Noah Clifton and John Clifton
have also purchased 31 acres of
said land with like notice of your
orator's said lien thereon; and that
the said John M. Whitehead has not now
a sufficiency of lands left to pay and
satisfy your orator's said judgment
lien; and that your orator is advised

that their judgment (as part of which has been
paid) is a lien under the Statute of Virginia, on
the said real estate, that the rents and profits will
not satisfy the said judgment in five years.
In tender consideration whereof, forasmuch as
your orators are amiable in the premises, and
by the aid of a Court of Equity, where matters of
this kind are alone and properly cognizable,
your orators pray that the said John M.
Whitehead, Jeremiah Mullens, Noah Cliftore and
John Cliftore be made parties defendant to
this Bill, and required in their respective
corporate oaths to answer the same, according
to the best of their knowledge and belief, as
fully and particularly as if the statements of
this Bill were here again repeated, and the
said defendants thereto specially interrogated, that
the said real estate, ^{or what interest said Whitehead has therein} as so much thereof as
may be necessary, be sold, to satisfy your
orators' judgments, and that your honor
will grant unto your orators such further and
general relief as may be consistent with Equity
and the case requires.

May the Commonwealth's writ of Habeas corpus,
and your orators as in duty bound
will ever pray.

Wm. A. Orr
for Plaintiffs.

C 5.78 Dec 1877
 A 15.00
 S 2.00
 \$22.78
 Add for C 78
 \$23.56
 Or clk .52 July 1881
 H. C 1.12
 \$24.98

Costs at law.

C 6.97
 A. 2.50
 S 2.00
 \$11.47
 V.P. 3.50
 W 1.50
 Postage .20
 \$16.67

Costs on Interrogatories.

Court 2.56
 S .50
 \$3.06

¹⁰⁰
 W. W. Woodruff & Co
 vs } Bill Chy.
 John M. Whithead, Clerk
 1877. Jany. Bill filed
 Spd Execd + D. N.
 11 Feb. D. N. Contd. +
 set for hearing by
 Pltffs.
 1877. Mr. Decree + Contd.
 11 Apr. Decree + Contd.
 1880. Mr. + Aug. Contd.
 1881. Mr. Contd. Aug. Contd.
 11 Aug. Contd.
 1882. March Decree Final

To the Honorable John A. Kelly Judge of the Circuit
Court of Lee County Virginia.

The separate answer of John M. Whitcomb
to a bill filed in this Honorable Court against him
and others by W. W. Woodruff & Co.

This respondent seeing the benefit of all just and
proper exceptions which may be had or taken to
the plaintiff's bill on its final hearing for an-
swer thereto or to so much thereof as he is advised it
is material for him to answer, answers and says
That he supposes it is true that the said Woodruff
& Co did obtain a judgement against him, as
stated in their bill, and he supposes that the
same was docketed in the judgement lien docket
as stated but if so it is easy to make proof by
filing transcripts from the records, and these
facts not being peculiarly within his own know-
ledge and therefore not the subject of discovery he
leaves the said Plaintiffs to avail themselves of
such evidence as they may find with which to estab-
lish their claim. But your respondent most
positively denies that at the date of said judgement
that he was the owner in fee simple of the tract
of land or any part thereof mentioned by the
plaintiff in his bill. Said tract of land was the
land of his wife inherited by her from her fa-
ther, Alexander S. Clark ^{and family contained at first about 179 acres} ~~There~~ ^{There} Alexander S. Clark. ~~There were~~ ^{There were}
two heirs to whom said lands descended to wit

Elizabeth Clark who intermarried with
one Samuel Sloan and Ursula who inter-
married with this respondent. Sometime after
the Marriage of the said Ursula with Respond-
ent, the said Sloan & wife and Respondent & wife
made partition among or between themselves of
said Tract of land the property of these aforesaid
wives and to carry said partition fully into ex-
ecution Respondent and wife by deed executed
on the 28th day of April 1857 conveyed one moiety
of said land to the said Sloan & wife and on the
same day and at the same time the said Sloan
& wife conveyed the other Moiety of said land to
Respondent & wife. Your ~~brother~~ ^{Respondent} is advised that
the deed of the said Sloan & wife to him & wife really
vests ~~no~~ fee simple interest in said land in him,
but effects only the same and no more than
would have been effected had said land been reg-
ularly partitioned by a suit in chancery. There
is a sum of twenty five dollars mentioned in the
deed of your ~~brother~~ ^{Respondent} & wife from said Sloan & wife
as being paid to said Sloan & wife. This sum
was never in fact paid, and is and was intended
only as a release of that sum to the said Sloan
who had been occupying and enjoying the whole
of said land for some length of time before the
Marriage of the said Ursula, and this release
or rather acknowledgment of that sum in

said deed was to prevent ~~any~~ claim for
rent by your Respondents wife, ever being set up
against him, and there was no money
paid by your respondent or his wife or by
any one for him.

Respondent now desires to call the attention of
the Court to a fact which though painful to him
self is nevertheless true. About the year 1874
respondent engaged in the Mercantile business
and in this business he was unsuccessful lost
money and in fact failed owing large sums of
money. Respondent was anxious to pay as
much of these debts ^{as} possible procured his
wife to join with and sell a part of these lands
this she did, and \$1500 worth of it was sold
to Jerry Mullins & \$800.00 worth to John &
Noah Clifton, which leaves only a small
balance of what was once a valuable Tract of
land. This balance is not worth more than
\$500 and would perhaps not sell for that sum.
It was the distinct understanding ^{and agreement} between your
respondent and his wife that if she would
give up to him for the benefit of his creditors
the aforesaid pieces of land that she should
have the balance moved free from all the
mortal claims of respondent her husband
under and by virtue of this agreement of
said Respondents wife consented that said

parcels of said land should be sold and in
this way it was sold and more than two thousand
and dollars realized; every cent of which except
a small amount used by respondent's family during the
absence of respondent, when he was unable to provide for them.
A wayon and hain worth about \$600, was applied
by respondent to the payment of his debts.
Respondent thinks that this agreement between
himself and wife which was so highly benefi-
cial to his creditors, should be respected and
enforced, and that his said wife should be pro-
tected in the enjoyment of the little left her, in
consideration of the many numerous sacrifices
she has made to pay her husband's debts.
Respondent will further state that he had to and
did make some small shares on some parts of the
purchase money of said two pieces of land in
order to save his sureties from the rapacity of some
creditors who were unwilling to give a day's time
on their debts. Respondent in the application
of this money to the payment of his ^{debts} applied
the same or attempted to apply it according
to the respective priorities of his creditors
debts. He had no other object in view than
to pay his debts, and he thinks he has made
this fully manifest by his acts, for it
would have been easy for him to have sheltered
himself behind the rights of his wife
and to have influenced her to hold on
to her lands, and in such an event only

his life estate could have been sold but in
stead of so doing he procured his said
wife to sell \$2500 in value of her said land
which was appropriated to the payment
of his debts as aforesaid. But this does not
seem to satisfy his creditors and although
they have already got more than $\frac{3}{4}$ of his
wife's patrimony they want the balance.

Respondent is advised that a court of
equity will set up and confirm an agreement
between himself and wife which is so highly
beneficial to his creditors and in such good
faith made, although every form and tech-
nicity of the law may not have been com-
plied with. And now having answered
as fully as he is advised it is necessary to
answer the Plaintiffs bill and expressly
denying all things in said bill not hereto-
fore denied or confessed he prays to be hence-
forward released with his costs, &c.

Morrison & Duncan for
Respondent.

Virginia Lee County, Tenn.

This day John H. Whitehead personally ap-
peared before me James H. Orr Clerk &c and made oath
that the facts stated in the foregoing answer upon his
own knowledge are true and that so far as stated as
information derived from others he believes them to
be true Given under my hand this 22 day of March 1879.

James H. Orr, Clerk.

John M Whitehead

Ans ²/₃ Answer

N. W. Woodruff recd

Filed Apr 3rd 1879.

John M Orr Clerk.

OFFICE OF

WILLIAM A. ORR,

Attorney and Counsellor at Law,

Will practice in all the Courts of
LEE, SCOTT, WISE AND WASHINGTON COUNTIES,

And in the

FEDERAL COURT AT ABINGDON.

PROMPT ATTENTION

GIVEN TO THE COL-

LECTION OF CLAIMS.

Jonesville, Lee County, Va.,

188

W. Woodruff & Co

vs.

J. M. Whitehead

Defts

} In Reply

It appearing to the Court
that there is nothing further necessary to be
done in this Cause, the same is
stricken off the docket

W.W. Woodruff & Co

vs } L. C. C. C. C.

J. M. Whitehead

Entered Page 229

J. A. Hyatt Clerk

Enter

J. A. K.

Wch 29th 1882

M. W. Woodruff & Co. Plffs

vs

John W. Whithead et al. Dfts

} Luleby.

This cause came on this day to be again heard upon the papers formerly read in the case, and was argued by Counsel, and it appearing to the Court that the defendants Jeremiah Mullens, ~~Isaac~~ Cliftors and John Cliftors have been duly summoned and they having failed to in any way appear to plaintiffs till the same is taken as to them pro confesso; upon consideration of which, and by Counsel of the plaintiffs and the defendant John W. Whithead, the Court doth adjudge, order and decree that the plaintiffs recover of the said John W. Whithead the sum of \$69.29 1/2 with legal interest thereon from the 1st day of June, 1874, till paid, and \$16.09 costs recovered at law, and the costs of this suit, and the said John W. Whithead waives the benefit of the homestead law as to this decree, and unless the same is paid on or by the 15th day of May 1880, then it shall be the duty of Wm. A. Orr who is hereby appointed a special Commissioner for the

purpose to sell so much of the land
in the bill mentioned as may be
necessary to pay this debt, on a credit
of 6 months, except all costs which
must be paid down, on some
Court day at the front door of
the Court house of Los Angeles to
the highest bidder, after having
admitted the time, place and
terms of sale by posting a written
notice thereof at the front door of
Said Court house, and to the vicinity
of the land for at least 30
days. ^{and take bond with good security as to the above} The well report to Court, and
the Court is continued.

W. W. Woodruff & Co

28 } Secue

John M. Whitehead & als

Ent. Page 61 & 62

Jas W Orck

Ent. Sec 2/79
Jas A. K.

W. M. Woodruff vs

J. M. Whithead } In reply

This cause came on
this day to be heard upon the
bill and exhibits filed therewith and
the answer of John M. Whithead
and exceptions thereto and was
argued by counsel: upon
consideration of which exceptions
No 1 is sustained and the said
John M. Whithead is directed
to give a full and complete
answer to said bill and the
cause is continued.

M. W. Woodruff

vs J. Stone

J. M. Whithead

Ent Page 42.

Jas Wm Clark

Ent

J. A. K.

W. W. Woodruff & Co. of Knoxville Tenn. Plffs.

vs

In Debt.

John M. Whitehead of Lee County Virginia Def.

Judgment for \$138.59, damages for the nonperformance of the assumption in the declaration mentioned, with legal interest thereon from the 1st day of June 1874, well paid, and the Costs, \$6.37. A. 2.50, S. 2.00 N. P. 3.50. 24.50
Postage 20. Date of Judgment - Sept. 2nd 1875. By what Court Rendered - Lee Circuit Court. Time of Docketing - Sept. 10th 1875.

A transcript from Lee's docket.

Teste - R. W. Orr Jr. D.C.

W. W. Woodruff & Co.

vs } Transcript of Judgt.
3 }
John M. Whitehead

"A"

This Deed made this— day of April the 28th one thousand
 and eight hundred and fifty-seven between John M. White-
 head, and Ursula, his wife, of the one part, and Samuel
 Stone and Elizabeth, his wife, of the other part, heirs of
 Alexander S. Clark deceased, all of the County of Lee and
 State of Virginia, Witnesseth, that whereas the said
 parties are the only heirs-at-law of Alexander S. Clark de-
 ceased and, as such, we, the owners of two certain tracts
 of land, one of which was conveyed to said Alexander S.
 Clark by Robert Clark Senr. lying and the North side of
 Powell's Mountain, and South side of Wallin's Creek, containing
 about 280 acres, the other being a part of an entry made by
 said Alexander S. Clark, and patented on the 15th day of
 December 1835, lying on the South side of Wallin's Ridge, being
 all of the land embraced in said patent, except one hun-
 dred acres of the Eastern end of said patent, which was
 sold by said Alexander Clark in his lifetime to William
 Roe, and whereas the said parties— agreed upon a line
 of partition between them, which is as follows: Begin-
 ning on a beech on the West side of a Spring branch,
 being a corner of the said 280 acres tract, thence run-
 ning with the meanders of said branch to Wallin's Creek,
 thence crossing the Creek to an elm and Cedar in
 the mouth of the horse holler, then running up the said
holler dividing the same to a double Chesnut in the
 head of said holler Robin Clark J. R. S. line, and the
 said John M. Whitehead and Ursula, his wife, for themselves
 and their heirs, do hereby contract with said Samuel

Slone, and Elizabeth², his wife, in consideration of the sum of seventy-five dollars to be paid to the said Samuel Slone and Elizabeth, his wife, do grant and relinquish, release, bargain, sell, and contract to them and their heirs forever all that part of the said two tracts of land which descended to the parties jointly, which lies on the West and North West of said line, containing about two hundred acres, more or less, and the said Samuel Slone and Elizabeth, his wife, for themselves and their heirs, do grant, bargain, and sell unto the said the said John M. Whitehead and Ursula, his wife, all that part of said two tracts of land, lying on the East and South East of said division line, in consideration of the premises, and the further consideration of seventy-five dollars to the said Slone and wife in hand paid, or secured to be paid, this sum given the amount of difference given in the value of the said land as agreed upon by the parties, and the parties do hereby covenant to warrant generally to each other the lands hereby conveyed. Witness, the following signatures and seals.

John M. Whitehead	(Seal)
Ursula Whitehead	(Seal)
Samuel Slone	(Seal)
^{her} Elizabeth Slone	(Seal)
mark	

Virginia, Lee County, Court: - We, William Marshall and S. H. Breeding, Justices of the Peace for the County and State aforesaid, do certify that John M. Whitehead and

Samuel Slone, whose names are signed to the writing above, bearing date on the 28th day of April 1857, have acknowledged the same before ~~us~~ in our County and State aforesaid.

Given under ^{our} hands this, 28th, day of April 1857.

Wm. Marshall J. P.

S. St. Breeding J. P.

Virginia, Lee County, to wit: - We, William Marshall and S. St. Breeding, Justices of the Peace for the County and State aforesaid, do certify that Ursula Whitehead, the wife of William Whitehead, and Elizabeth Slone, whose names are signed to the writing above, bearing date on the 28th day of April 1857, personally appeared before us in the County and State aforesaid and, being examined by us privately and apart from their husbands, and having the writing aforesaid fully explained to them, they, the said Ursula Whitehead and Elizabeth Slone acknowledged the said writing to be their act, and declared that they had willingly executed the same, and does not wish to retract it. Given under our hands this, 28th, day of April 1857.

William Marshall J. P.

S. St. Breeding J. P.

Virginia,

At a Court of Quarter Sessions begun and held for Lee County, at the Court House thereof, on the 17th day of August 1857. This Deed of Partition between John M. Whitehead and Ursula, his wife, of the one part,

and Samuel Stone and Elizabeth, his wife, of the other
part, admitted to record upon the Certificates of two
Justices of the County.

Teste - S. P. Morrison N.C.

A copy. Teste James W. Orr, Clerk.

John M. Whitehead vs wife
between } deed of Partition
Sam'l Stone vs wife

D.

Decree vs John M Whitcomb in favor of
 W W Woodruff & Co, with Int from 1st June 1874. \$ 69.29
 Int on same to 1st June 1880. 24.94.
 Cost at Law. 16.67
 Cost on interrogatories. 3.06
 Cost in Chancery suit 23.54
 Cost of Richmond & Co for do. 24.35-
 161 85-

By Cash per recd dated 13. Jan'y 80 \$ 35.00
 " " " " " 15 May 80 \$ 70.00 105.00
 Int on same to 1st Decr- 1880. \$ 56.88-
 1.60
 \$ 58.45-

Or By cash of C. T. Davis Dec 1880. 51.48
 6.97

Statement

58.45-
5-148
6.97

Virginia.

Office of James W Orr Court in Chancery Decr 11th 1878.
John M Whitehead having been summoned to answer
interrogatories propounded ^{him} by W. W. Woodruff & Co.
answers as follows. —

Ans to Interrogatory No 1.

I am a life estate interest in a tract of land on which I now reside, said to contain 199 acres, the same having been inherited by my wife. I am a tract of land said to contain 400 acres, known as the Vandeventer farm, which is subject however to two deeds of trust, one in favor of Robert Sims for about seven hundred dollars and ~~one~~ ^{the other} in favor of Leeman McBlung & Co for about \$1600⁰⁰, and on which tract there remains about \$400⁰⁰ of the purchase money unpaid. And I am no other real estate.

Ans to No 2.

The above answer, shows all my interest in the real estate therein mentioned.

Ans to No 3.

The home tract mentioned in Ans No 1, & in which I have a life estate interest, I consider worth about \$1500⁰⁰, and the 400 acre tract I consider worth about the same sum.

Ans to No 4.

I do not know who paid for the land which appears upon the record to belong to my wife, but suppose her father did.

Ans to No 5.

I do not know how nor from what source the money was obtained that paid for the land which my wife owns.

Ans to No 6.
& No 7.

I am one horse, one milk cow, four head of hogs (small) & a few carpenter tools, which is all the personal property owned by me or under my control.

Ans to No 8.

The horse is worth about \$50.00, the Cow \$10.00, the hogs \$4.00, the carpenter tools \$20.00.

Ans to No 9.

None that I now remember.

Ans to No 10. I have paid a portion of two debts, one to Tho^d Vandewater & one to my clerk, which consumed the whole.

Ans to No 11. None.

Ans to No 12. I have none.

Ans to No 13. I have no money deposited in Bank, and none loaned out.

Ans to No 14. In my answer to Interrogatory No 6 & 7 will be found an answer to this, (No 14.)

Ans to No 15. I do not ^{now} remember of any person that is now indebted to me, there may be some small sums due me, but I do not now remember any.

J M. Whithead

Sworn to and subscribed before me, this Dec 11th 1875.

James W. Orr, Comm.
in Chancery.

Comm's fee \$1.50

Lee County Circuit Court.

W. W. Woodruff & Co.

vs { Proceedings

J. M. Whitehead.

In the circuit Court of Lin County.

Between W. W. Woodruff & Co., Complainants,
and John M. Whitehead et al. Defendants.
Exceptions taken by the said Complainants
to the insufficient answer of John M. White-
head to complainants' bill of Complaint.

1st. For that the said defendant, John M.
Whitehead, hath not, to the best and utmost
of his knowledge, remembrance, and
belief, answered and set forth
whether or not he had a life estate
in the Real estate in Complainants' bill
of Complaint mentioned and described,
at the time when the Complainants
Judgment was docketed in the Jud-
gment Lien Book of Lin County

2nd. For that the said answer of the said John
M. Whitehead is Multifarious and states things
which do not concern the complainants, in
this, that he states certain agreements between
himself and wife concerning some of his
mercantile troubles, which statements
themselves show and admit that these ^{agreements}
were not legal and binding upon
these Complainants, nor do they show
that these Complainants were in any wise
responsible for said defendants mer-
chantile troubles; but to the contrary the

defendant asks, by these statements
a court of equity to enforce a
said agreement between himself
and wife — and that he says
does not conform with law.

3rd And for this that the said answer
shows that he sold certain lands
as claimed in complainant's bill
of Complaint and applied a part
of the proceeds to the payment of
his debts, admitting that he did
not do so legally, and without
stating that he applied anything
to complainant's judgment. Which
is a violation of the last named
rule of Pleading.

4th — For that the said defendant hath
not in manner aforesaid, answered
and set forth whether or not he
did not have a joint interest
with his wife in the land
named in the Complainant's
bill of Complaint at the
time of the aforesaid docketing
of their Judgment.

In all which particulars the
said Complainant excepts
and answers to the

answer of the said defendant
John M. Whitehead, as evasive
imperfect, and insufficient,
and humbly prays that the
said defendant John M.
Whitehead, may be compelled to
put in a full and sufficient
answer thereto.

Wm A. Orr J. C.

W. H. Woodruff & Co^{rs}

as } Exceptions to Ans.
of J. M. Whitehead.

John M. Whitehead et al
Filed Mar. 1879.

Jas W Orick

1st exception good
to this extent - it does
not appear whether
the wife joined
in the conveyance
before or after
Jan 8th.

Virginia Lee County to wit:

To the Sheriff of Lee County Greeting
I command you in the name of the Commonwealth
of Virginia to summon D. M. Whitehead to appear
before me on the 10th day of December 1875 at my
office in the town of Douglasville Lee County Virginia
to answer certain interrogatories filed in my office
against him by W. W. Woodruff & Co, And that
he shall in no wise omit under the penalty of the law
Witness James W. Orr, Commissioner in Chancery
for the Circuit Court of Lee County Virginia
This the 26th day of November 1875 and in
the 100th year of the Commonwealth

James W. Orr. Comm

W. W. Woodruffe

vs ~~James~~ James

S. M. Whitehead

December 1875

Executed by delivering a copy of
the within Notice and a copy of
the Interrogatories to John M
Whitehead the 10th December, 1875.

Thos. S. Ely S. L. C.

The Commonwealth of Virginia,

To the Sheriff of Lee County---Greeting:

We Command you to Summon

John M. Whitehead, James L. Mullins, Noah Clifton & John Clifton

To appear at the Clerk's office of the Circuit Court of Lee, at the Court-House, on the first Monday in

Jan'y next, being rule day, to answer a bill in Chancery, exhibited in our said Court against
them by *W. W. Woodruff &*

*W. C. Gibbens Merchants & Partners in Trade,
doing business under the firm Name & Style
of "W. W. Woodruff & Co."*

And have then there this writ. Witness, JAMES W. ORR, Clerk of our said Court, at the Court-House, this

day of

Decr,

1878; in the 103rd year of the Commonwealth.

J. W. Orr, Jr. D. CLERK.

W. W. Woodruff & Co.

or { Spa. in Chy

John M. Whitehead

Jan. Rules 1879

Executed by delivering
copies of the within to
John Clefton
Asah Clefton
Jerry Mallins
and one to the wife of
John M. Whitehead &c
not being at his usual
Place of Abode and Explac-
ing the same to her

Thos. S. Cole